

1 CHARLES B. WALKER
Executive Director
2 City of San Diego Ethics Commission
1010 Second Avenue, Suite 1530, San Diego, CA 92101
3 (619) 533-3476

4 Complainant
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8 **BEFORE THE CITY OF SAN DIEGO**
9 **ETHICS COMMISSION**

10 In the Matter of) Case No. C02-67
11)
12 Michael Madigan,) **STIPULATION, DECISION**
Respondent.) **AND ORDER**
13 _____)

14 **THE PARTIES STIPULATE AS FOLLOWS:**

15 1. Complainant Charles B. Walker is the Executive Director of the City of San
16 Diego Ethics Commission [Ethics Commission]. The Ethics Commission is charged with a duty
17 to administer, implement, and enforce local governmental ethics laws contained in the San Diego
18 Municipal Code [SDMC] relating to, among other things, the disclosure of economic interests
19 as set forth in the City's Ethics Ordinance.

20 2. Respondent Michael Madigan [Respondent] was, at all times mentioned herein, a
21 consultant retained by the City of San Diego for the ballpark and redevelopment project.
22 Respondent was required to file statements of economic interests pursuant to the conflict of
23 interest code adopted by the City Council for the Office of the City Manager.

24 3. This Stipulation, Decision and Order [Stipulation] will be submitted for consideration by
25 the Ethics Commission at its next scheduled meeting, and the agreements contained herein are
26 contingent upon the approval of the Stipulation and the accompanying Decision and Order by the
27 Ethics Commission.

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4. This Stipulation resolves all factual and legal issues raised in this matter by the Ethics Commission without the necessity of holding an administrative hearing to determine the Respondent's liability.

5. Respondent understands and knowingly and voluntarily waives any and all procedural rights under the SDMC, including, but not limited to, a determination of probable cause, the issuance and receipt of an administrative complaint, the right to appear personally in any administrative hearing held in this matter, the right to confront and cross-examine witnesses testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to have the Ethics Commission or an impartial hearing officer hear this matter.

6. The Respondent acknowledges that this Stipulation is not binding upon any other law enforcement or government agency and does not preclude the Ethics Commission from referring this matter to, cooperating with, or assisting any other law enforcement or government agency with regard to this or any other related matter.

7. The parties agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondent further agrees that in the event the Ethics Commission rejects the Stipulation and a full evidentiary hearing before the City Ethics Commission becomes necessary, no member of the Ethics Commission or its staff shall be disqualified because of prior consideration of this Stipulation.

SUMMARY OF FACTS

8. On March 22, 2000, Respondent filed an assuming office statement of economic interests. Respondent filed an amendment to this statement on March 30, 2000.

9. On March 16, 2001, Respondent filed an annual statement of economic interests for the 2000 calendar year.

10. On October 7, 2001, Respondent married Laurie McKinley, a principal of McKinley Nielsen Associates, Inc. dba MNA Consulting. At all times mentioned herein, Ms. McKinley had an ownership interest in MNA Consulting that was greater than ten percent and valued at more than \$2,000. MNA Consulting is located in and does business in the City of San Diego.

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1 11. On March 11, 2002, Respondent filed an annual statement of economic interests for the
2 2001 calendar year. Respondent filed an amendment to this statement on May 24, 2002.

3 12. On October 9, 2002, Respondent filed a leaving office statement of economic interests.
4 Respondent filed an amendment to this statement on October 31, 2002.

5 13. At all times mentioned herein, Respondent owned an interest totaling more than \$2,000
6 in real property located at 3010 Curlew Street in the City of San Diego.

7 **SUMMARY OF LAW**

8 14. SDMC section 27.3510 mandates the filing of statements of economic interests on an
9 annual basis on or before April 1 of each year, as well as within thirty days of assuming or
10 leaving office. According to SDMC section 27.3510 and the Conflict of Interest Code to which
11 he was subject, Respondent was required to disclose certain investments, business positions,
12 interests in real property, and sources of income.

13 15. Respondent's Conflict of Interest Code requires the reporting of all investments,
14 business positions, and income from sources located in or doing business in the City of San
15 Diego. California Government Code section 82034 defines "investment" to include any
16 ownership interest in a business entity, valued at \$2,000 or more, of a public official or his or her
17 immediate family, if the business entity does business or plans to do business in the jurisdiction,
18 or has done business within the jurisdiction at any time during the past two years. Investments
19 include a pro
20 rata share of investments of any business entity in which the individual or immediate family
21 owns, directly, indirectly or beneficially, a ten percent interest or greater.

22 16. Respondent's Conflict of Interest Code also requires the reporting of all interests in real
23 property located in the agency's jurisdiction. California Government Code section 82033 defines
24 "interests in real property" to include any ownership interest in real property located in the
25 jurisdiction owned directly, indirectly or beneficially by the public official if the fair market
26 value of the interest is \$2,000 or more.

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COUNTS 1 AND 2
Violation of SDMC Section 27.3510
[Disclosure of Interest in Business Entity]

17. Respondent failed to report his spouse's interest in MNA Consulting on Schedule A-2 of his annual statement of economic interests for the 2001 calendar year, as well as his leaving office statement.

COUNTS 3 THROUGH 6
Violation of SDMC Section 27.3510
[Disclosure of Interest in Real Property]

18. Respondent failed to report his interest in the real property located at 3010 Curlew Street in the City of San Diego on Schedule B of his assuming office statement, his annual statement for 2001, his annual statement for 2002, and his leaving office statement.

STIPULATIONS AND ORDER

AGREEMENT

19. With respect to the disclosure of his spouse's interest in MNA Consulting, Respondent agrees to file all appropriate amendments to his annual statement of economic interests for the 2001 calendar year, as well as his leaving office statement.

20. With respect to the disclosure of his interest in the real property located at 3010 Curlew Street, Respondent agrees to file all appropriate amendments to his assuming office statement, his annual statement for 2001, his annual statement for 2002, and his leaving office statement.

FACTORS IN AGGRAVATION

21. Respondent is a sophisticated businessman with extensive experience in municipal affairs. Respondent could have been more diligent in determining the scope of his disclosure obligations, especially in light of the fact that he knew his spouse's company was representing the San Diego Padres Baseball Club and Centre City Development Corporation with respect to the ballpark and redevelopment project.

FACTORS IN MITIGATION

22. Respondent has cooperated fully with Ethics Commission staff in assisting with the investigation. Respondent had reason to believe that his spouse's business interests were beyond the scope of his required disclosure because, as of the date of their marriage, his spouse had

1 ceased working with MNA Consulting clients located in the City of San Diego. He also provided
2 evidence of a premarital agreement showing that the ownership interest in MNA Consulting
3 represented his spouse's separate property. While Respondent was mistaken with regard to his
4 obligation to disclose certain financial interests, the investigation uncovered no evidence
5 suggesting that his failure to disclose was part of a deliberate effort to hide his economic
6 interests. For example, while Respondent failed to disclose his ownership of the Curlew Street
7 property, he did disclose the loan he obtained to finance the purchase of that property.

8 **CONCLUSION**

9 23. Respondent shall pay the amount of \$1,000 no later than February 28, 2003.

10 24. This Stipulation shall not become effective until Respondent has provided to the Ethics
11 Commission a check or money order in the amount of \$1,000 made payable to the City
12 Treasurer.

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14 DATED: _____

CHARLES B. WALKER, Executive Director
EXECUTIVE DIRECTOR ETHICS COMMISSION
Complainant

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17 DATED: _____

MICHAEL MADIGAN, Respondent

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20 **DECISION AND ORDER**

21 The Ethics Commission has considered the above Stipulation at its meeting on February 27,
22 2003. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
23 with the Stipulation, Respondent pay the amount of \$1,000.

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25 DATED: _____

DOROTHY LEONARD, Chair
SAN DIEGO ETHICS COMMISSION